IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8057 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOHIL DILIPBHAI CHIMANLAL

Versus

GAS AUTHORITY OF INDIA LTD.

Appearance:

1. Special Civil Application No. 8057 of 1998

MR NR SHAHANI for Petitioner No. 1-2

RULE NOT RECD BACK for Respondent No. 1

MR KJ THAKAR for M/S TRIVEDI & GUPTA for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/05/2004

ORAL JUDGEMENT

The petitioners have approached this Court under

Article 226 of the Constitution of India for seeking reliefs to the effect that they be extended the benefit of policy of preference in employment, removal of intermediary contractor and payment of higher wages as contained in the settlement that has been arrived at between respondents nos. 1 and 2 - Union of workers namely, Gujarat Mazdoor Panchayat, Ahmedabad and the Gujarat Working Class Union, Bharuch under Section 12 (3) of the Industrial Disputes Act, 1947 dated 22nd September, 1997. Further that they be permitted to form Labour Co-operative Society and they may also be given the same treatment in respect of wages, preference in recruitment / employment as is being given to the workers listed in the settlement and who have been made members of the Co-operative Society formed under the settlement.

1.1. By way of interim relief, the petitioners have prayed that they may be permitted to join the Co-operative Society of the workers and they be given similar treatment and further that the respondents be directed to observe status-quo and permit the petitioners to work in the same manner as they were working irrespective of the expiry of their gate passes or the labour contract with respondent no. 3.

2. The petitioners case is that they have been working with respondent no. 1 in the stores department as Helper-cum-Khalasi - II. Petitioner no. 1 has been working since the year 1991, whereas petitioner no. 2 has been working from the year 1995. They are being paid Rs.1,700=00 per month. It is their say that they have been working through different contractors, details of which have been given in paragraph 2 of the petition and at the time of filing of the petition they were working through respondent no. 3 from 14th May, 1997. According to the petitioners, respondents nos. 1 and 2 had informed them in or around September, 1998, that after expiry of the present gate passes they would be removed from the services. These gate passes were valid upto 30th September, 1998. Since they apprehended that thereafter they would be rendered jobless by the respondents, they have approached this Court.

2.1. It is averred by the petitioners that they are being wrongly deprived of the benefit of the settlement which has been made available to the other similarly situated workers of the contract. It is further averred that the settlement which has been arrived at between respondent no. 1 and aforesaid two trade Unions is beneficial to only those persons who are members of the Unions as well as Labour Co-operative Society formed

under the settlement. The Society has been formed with a view to replace the Labour Contractors who are intermediaries, secondly to increase wages every year for three years and thirdly to give preferences to the members of the Society in the matter of recruitment/ employment in respondent no. 1. According to the petitioners, like them, several other workers have also been not given this benefit and they have preferred petitions before this Court. Their main grievance is directed against respondent no. 1 who according to them is a "State" within the meaning of Article 12 of the Constitution of India and all the aforesaid reliefs have been claimed against it. It is the say of the petitioners that the work which is being handled by them in the stores department, involves a special skill which the petitioners have by now acquired and the nature of work also indicates that it could be on permanent basis. It is the say of the petitioners that considering the aforesaid factors, it was just and proper for respondents nos. 1 and 2 to permit the petitioners to join Labour Co-operative Society formed under the settlement and they ought to have been permitted to receive the benefits as stated above. As provided in the settlement they have averred that refusal on the part of respondent no. 1, to grant such permission, is not only high-handed but arbitrary, irrational, discriminatory and hence violative of Article 14 and Article 16 of the Constitution of India. In view thereof, they have approached this Court for claiming the aforesaid reliefs.

2.2. As against that, the case of respondents nos. 1 and 2 is that the petitioners have no reason or justification to approach this Court by way of this petition and complain about discriminatory treatment, because they are not similarly situated persons vis-a-vis 150 workers who have been granted benefit and also the membership of the Labour Co-operative Society. Secondly, they are not the employees of respondent no. 1 and their service is associated with the term of the contract entered into with respondent no. 3, which was to expire sometime in the year 1998. According to the respondents the nature of work that was required to be executed by respondent no. 3 was for a particular period and upon the period being over, there was no further extension of engaging the service of respondent no. 3 and the contract was to come to an end around September, 1998. It is further averred by the respondents that if they are permitted the membership of the Society and if they are recruited in the employment of respondent no. 1 it would be without following the due procedure for recruitment and it would mean granting them back-door entry. They

have also raised objections with regard to maintainability of the petition on the ground that the petitioners are the employees of respondent no. 3 and they have no locus-standi to file this petition. According to them, the facts on record clearly show that the petitioners are under direct control, supervision and administration of respondent no. 3 and they are rendering the service to respondent no. 1 in the capacity of the employees of respondent no. 3.

2.3. It is further contended by respondents nos. 1 and 2 that respondent no. 1 had been engaging contractors for different types of works and the settlement was arrived at with the aforesaid Unions in respect of workers of the contractors who were executing jobs of permanent nature such as Sweepers and workers like Fire Safety shops. It is also the say of the respondents that the benefit of settlement was given to only those who were workers and members of the Unions. In view of the aforesaid, the respondents have prayed for dismissal of the petition.

3. Mr. N. R. Shahani learned advocate appearing for the petitioners has submitted that the settlement arrived at between respondents nos. 1 and aforesaid two trade unions dated 22nd September, 1997 is discriminatory, restrictive and it is appropriately termed as Closed Shop Settlement which is violative of Article 14 of the Constitution of India. He has further submitted that the petitioners are similarly situated employees vis-a-vis 150 workers who have been enlisted in this settlement and they should also be granted this benefit in the matter of membership of the Labour Co-operative Society; payment of higher wages and preference in recruitment. He has further submitted that respondent no. 1 being a "State" within the meaning of Article 12 of the Constitution of India is highly responsible towards its employees than the private employer. It therefore, cannot act arbitrarily and practice hostile discrimination with the petitioners to deny them aforesaid benefit. He has further submitted that though contractors have changed, they have continued to work with respondent no. 1 since the year 1991 and 1995 respectively through different contractors and, therefore, there was all reasons for respondent no.1 to permit them to become the members of the Labour Co-operative Society to enable them to receive the aforesaid benefits. He has further submitted that the petitioners cannot be relegated to the remedy provided under the Industrial Disputes Act to get those disputes agitated upon since the nature of dispute involve would

not legally permit the petitioners in their qualified capacities to pray for a Reference to the appropriate forum under the Industrial Disputes Act, unless, their case is taken up by larger section of the workers or any of the Unions. In other words, according to him, petition under Article 226 of the Constitution of India is not appropriate remedy. Lastly, he has submitted that in the event, Court comes to the conclusion that the dispute is required to be resolved by forum created under the Industrial Disputes Act, this Court shall grant adequate protection to the petitioners till the dispute is agitated.

3.1. As against that Mr. Kartik Thakar learned advocate appearing for the respondents has submitted that the petitioners have no locus standi to file this petition since they are not the employees of respondent no. 1 nor they are similarly situated workers. He has further submitted that settlement has been arrived at, who were the parties namely, respondent no. 1 and the two aforesaid trade unions. The petitioners have not joined those two Unions as party to the proceedings inspite of the fact that the settlement is challenged by them in this petition. Mr. Thakar has also submitted that considering the contents of the petition as well as submissions advanced by Mr. Shahani, it is very clear that the petitioners are asking the Court to lift the veil and find out the real status of the petitioners, which cannot be done in this proceedings. In his submissions, the settlement is not discriminatory nor it can be described as Closed Shop Settlement because the same has been arrived at by the parties keeping in view the benefit which is to be afforded to the workers executing the work of permanent nature. He has also submitted that the term of the petitioners is already over. Only by virtue of the Courts order by way of interim relief they are being paid idle wages. He has, therefore, submitted that this petition is required to be dismissed.

4. Having carefully gone through the record of the petition as well as submissions advanced by both the learned counsel, it clearly appears that the petitioners have been working with respondent no. 1 as the employee of the contractor. It is the say of the petitioners that so far as petitioner no. 1 is concerned, he has been working since the year 1991 and petitioner no. 2 is working since the year 1995. They have, therefore, claimed that they should be given the benefit of the settlement and for claiming the benefit, they have advanced two causes, namely that the settlement is a

policy which is adopted by respondent no. 1 and when it is a policy, it could be equally applied to all the employees working with respondent no.1. It is their say that respondent no. 1 cannot have two yardsticks in the matter of granting benefit of the policy. Their say is that since they are under the direct control, supervision and administration of respondent no. 1 through respondent no. 3 they should be granted this benefit. In view of this, it would be necessary to first turn to the case of the petitioners to find out what are the averments that have been made in that behalf and whether it is possible for this Court to decided the said question in a petition under Article 226 of the Constitution of India.

4.1. As stated above, the petitioners submit that they have been working since the year 1991 with respondent no. 1. They have stated that initially, petitioner no. 1 worked with M/s. Leshco through M/s. E.T.L. who were contractors of respondent no. 1 from July, 1991 to December, 1992. Thereafter, he worked through M/s. Accurate Survey Instruments & Engg. Company from 1st January, 1993 to January, 1994. Subsequently, he worked through M/s. Kamla Electrical & Engg. Company from 1st February, 1994 to 15th March, 1995. Thereafter, petitioner no. 2 worked as helper and were paid through M/s. Accurate Survey Instruments & Engg. Company from 15th March, 1995 to 31st July, 1995. Thereafter through M/s. Prashant Transport between 1st August, 1995 to 13th May, 1997 and lastly, through respondent no. 3 from 14th May, 1997. They have further contended that there was ample evidence in different form to show that they have been rendering service in the stores of respondent no. 1. In affidavit-in-rejoinder filed by the petitioners, several submissions to this effect have been made and also certain documents have been produced to show that their services were being sold to respondent no. 1 through different contractors. They have also placed reliance on the bills that have been issued to the labour contractors by respondent no. 1 to show that these bills were duly approved by M/s. M.K. Shukla and Henry. They have, therefore, submitted that they have been rendering service in LPG stores of respondent no. 1 on permanent basis and they were being paid fixed salary from the contractors. It also appears that a statement was made to this Court [Coram : K.R. Vyas, J.] by the respondents that status of the petitioners was under consideration.

4.2. All these averments have been vehemently contested by the respondents and in particular

respondents nos. 1 and 2. It is the say of the respondents that petitioners are being paid by the contractors and they have been under the direct control, supervision and administration of the contractors and respondents had no direct or indirect control over it. Thus, facts averred by the petitioners have been disputed by the respondents seriously. It is very clear that such controversies can be resolved only by leading proper evidence, by production of relevant documents etc. It is difficult for this Court to exercise jurisdiction under Article 226 of the Constitution of India to enter into all these questions of fact regarding serious dispute and give a definite finding on each count. In my opinion, such disputes could be effectively resolved only by way of regular trial before the appropriate forum created under the Statue.

4.3. Though it is not specifically averred and even not declared that the petitioners are the employees of the respondent no. 1, from the averments that have been made in the petition as well as in the affidavit-in-rejoinder filed by the petitioners, it is clear that they are claiming for such status. If that be so, such claim has to be decided by the forum created under the Industrial Dispute Act. The Apex Court in a recently delivered decision in the case of Workmen of Nilgiri Co-op. Mkt. Society Ltd. v. State of Tamil Nadu & Ors. reported in (2004) 3 S.C.C. 514 has laid down that whether workers are employees of principal employer or of contractor is pure question of fact and the burden of proof lies on the party setting up plea regarding existence of such relationship. It is further held that it being question of fact, it can be adequately decided by the Tribunal or Labour Court.

5. Mr. Shahani ofcourse pointed out the difficulty which according to him may come in the way of the petitioners for approaching the Labour Court as according to him in their individual capacity, they will not be able to raise such disputes. For that purpose, he has placed reliance on the decision of the Apex Court rendered in the case of The Bombay Union of Journalists and Ors. v. Bombay & Ors., reported in A.I.R. 1963 S.C. 318, wherein it has been decided as under :-

> "A dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen. The persons who seek to support the case of a workman must themselves be directly and substantially

> interested in the dispute and this would depend on the facts and circumstances of each case. Persons who are not employees of the same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute. In each case, in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up or supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen."

5.1. It may be noted here, that according to the petitioners there are several such employees who have been denied this benefit. They have also approached this Court by filing petitions before this Court. In paragraph 1 of the petition, number of petitions filed by others have been mentioned. Special Civil Application No. 9151 of 1997 has been filed by 6 workers of A.C. plant; Special Civil Application No. 502 of 1998 has been filed by 9 sweepers; Special Civil Application No. 2398 of 1998 has been filed by 15 workers of fire & Safety dept. Mr. Thaker has produced order of this Court [Coram : H.K. Gokhale, J.] dated 9th October, 1998 whereby Special Civil Application no. 9151 of 1997 with Special Civil Application No. 8217 of 1998 has been disposed of. By the said order, 6 and 4 workmen who were engaged in an Air-conditioner plant of respondent no. 1 were directed to approach the appropriate authority by raising such demands. It was observed by the learned Single Judge that it would be an industrial dispute and the petitioners of those petitions could take necessary remedy under the Industrial Disputes Act. Similarly another learned Single Judge [Coram : Miss R.M. Doshit, J.] passed order in Special Civil Application No. 1651 of 2002 relating to the present settlement and identical claim made by petitioners of that petition, whereby the said petitioners were required to go to Industrial Court. The petitioners have stated that they have now become members of one of the Unions. They have even filed affidavit to the effect that both the Unions have no objection, if they are allowed to be members of the Society. In view thereof, if any industrial dispute is to be raised that can be done through some Union, but this Court under Article 226 of the Constitution of India cannot be called upon to go into each and every disputed question of fact and remedy the grievances of the petitioners.

5.2. So far as the other contention of Mr. Shahani with regard to settlement being discriminatory and restrictive is concerned, it is clear that it has been entered into by the recognized Unions of respondent no.1 namely Gujarat Mazdoor Panchayat and Gujarat Working Class Union, Bharuch under Section 12 (3) of the Industrial Disputes Act read with Rule 58 of the Industrial Disputes (Central) Rule, 1957, in the course of conciliation proceedings before the Assistant Labour Commissioner, (Central), Baroda. Section 2 (p) of the Industrial Disputes Act, defines the word "settlement". It is as under :-

> "[(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorized in this behalf by] the appropriate Government and the conciliation officer;]

5.3. Thus, this settlement which is arrived at in the course of conciliation proceedings is a settlement within the meaning of Section 2 (p) of the Industrial Disputes Act. The same has been worked out and arrived at by respondent no. 1 as well as aforesaid two trade unions and which has been duly signed by the office bearers of the management of respondent no. 1 and the authorized office bearers of both the aforesaid Unions on behalf of the workers, representing Bharuch, Ahmedabad, Baroda and Waghodia, duly witnessed by the signatories to the said settlement as witnesses before the Conciliation Officer and Assistant Labour Commissioner. In view of this, the settlement has binding effect on the workers / employees working with respondent no. 1. The petitioners irrespective of their claim, they would be equally bound by the terms of settlement. The Apex Court in the case of I.T.C. Ltd., Workers Welfare Association & Anr. v. The Management of I.T.C. & Ors. reported in A.I.R. 2002 S.C. 937 has held that settlement arrived in the course of conciliation proceedings, it carries a presumption that is just and fair. Thus, for the present Mr. Shahani's submission cannot be accepted. It will be for the petitioners to establish that it is not so. Ofcourse, the Apex Court had said that such settlement cannot even be tested on the touch stone of Article 14 of the Constitution of India. It is the say of the

respondents that the nature of work rendered by those employees was of permanent nature and they were to be rendered certain benefits which were not necessary to be given to the employees of the contractor who had been given contract for job for specific period. It is the say of the respondents that job that was undertaken by respondent no. 1, wherein respondent no. 3 was required to perform its part of the contract for a particular period was over and the contract of respondent no .3 was to be terminated in September, 1998. The petitioners being respondent no. 3's employees were, therefore, not required to be given this benefit.

5.4. As against that, it is the say of the petitioners that even the gate passes and the averments made in the affidavit-in-reply show that the petitioners have been attached to the L.P.G. stores as helpers and they were rendering service of permanent nature. In view of this rival contentions, it is difficult for me under Article 226 of the Constitution of India to accept the contentions of the petitioners to the effect that the settlement is restrictive or discriminatory.

6. The aforesaid discussion is also taking care of the submissions that has been advanced by Mr. Shahani that settlement would amount to policy adopted by respondent no. 1 which could be equally made applicable in cases of the workers other than included in the list of the workers in the settlement. Even if it is presumed that Mr.Shahani's interpretation with regard to the settlement is to be accepted whether the petitioners were entitled to be covered under the policy would be a question to be considered. That again would depend on the status of the petitioners on the issue that whether they are the similarly situated workers like the ones enlisted in the settlement.

6.1. It may be noted here, that in the petition several averments have been made, wherein the petitioners have stated that they should be permitted to become members of the Labour Co-operative Society, floated under the settlement. It is also prayed by way of interim relief in sub-clause 2 of clause D of paragraph 11 of the petition wherein, direction be given to respondent no. 1 to permit the petitioners to join the Labour Cooperative Society of workers and give similar treatment. However, no such substantial prayer has been made in the petition in paragraph 11 by the petitioners. If substantial prayer on that line is not made, such prayer cannot be granted in this petition. The petitioners have during the course of hearing, filed affidavit dated 5th May,

2004. wherein it has been stated that now both the Unions have agreed to extend to them benefits under the settlement including the membership of the Labour Co-operative Society. This ofcourse, is controverted by the Officer of respondent no. 1 who is present in the Court on 5th May, 2004. He has not filed any affidavit, but has made oral statement through learned advocate for respondent no. 1, because the petitioners have filed this affidavit in the course of actual hearing and that too after Mr. Shahani's arguments were over. Thus, on that question also there is serious dispute. Therefore, regarding grant of membership to the Labour Co-operative Society is out of question. It may also be noted here, that though the petitioners have challenged the settlement only, respondent no. 1 being one of the parties to the settlement has been joined as respondent in the proceedings. Both the labour unions are not joined, nor the beneficiaries to the settlement are joined as parties. Therefore, in view of the aforesaid, statement of the petitioners made in the affidavit-in-reply dated 5th May, 2004, cannot be accepted at its face value.

7. In light of the aforesaid, it is clear that whatever disputes that are existing between the parties can be effectively decided in the proceedings before the Labour Court under the Industrial Disputes Act. Under Article 226 of the Constitution of India, this Court has very limited jurisdiction and as discussed above, it cannot go into the disputed questions of fact and resolve the controversies. This petition is required to be dismissed. However, if the petitioners so desire, they can approach the appropriate forum under the Industrial Disputes Act within three weeks from the date of certified copy of this judgment is ready for delivery. The Conciliation Officer will take decision and will submit his report within six weeks from the date of the petitioners approaching him for conciliation and in the event of failure report, the Union Government will make Reference to the Labour Court within eight weeks from the submission of the report. In the event of Reference being made, the petitioners shall file appropriate application praying for stay against the termination of their service within two weeks from the date of decision of the Labour Court and if such an application is made, the Labour Court shall decide the same strictly in accordance with the merits of the case without being influenced by the fact that this Court has protected the petitioners till such time.

The petition is, therefore, dismissed. Interim

relief granted earlier stands extended in accordance with the aforesaid direction. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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